

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Senate Bill 139 be amended to read as follows:

- 1           Page 1, line 6, reset in roman "(A)" and double block indent.
- 2           Page 1, line 8, reset in roman "(B) the forensic diversion" and
- 3           double block indent.
- 4           Page 1, line 8, after "diversion" insert **"test program plan under**
- 5           **IC 11-12-3.7-4, if the county operated a forensic diversion**
- 6           **program on January 1, 2004."**
- 7           Page 2, between lines 21 and 22, begin a new paragraph and insert:
- 8           "SECTION 2. IC 11-12-3.7 IS ADDED TO THE INDIANACODE
- 9           AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 10          1, 2004]:
- 11          **Chapter 3.7. Forensic diversion test program**
- 12          **Sec. 1. This chapter only applies to a county that operated a**
- 13          **forensic diversion program under IC 11-12-3.5 on January 1, 2004.**
- 14          **Sec. 2. As used in this chapter, "addictive disorder" means**
- 15          **a diagnosable chronic substance use disorder of sufficient duration**
- 16          **to meet diagnostic criteria within the most recent edition of the**
- 17          **Diagnostic and Statistical Manual of Mental Disorders published**
- 18          **by the American Psychiatric Association.**
- 19          **Sec. 3. As used in this chapter, "drug dealing offense" means**
- 20          **one (1) or more of the following offenses:**
- 21               **(1) Dealing in cocaine, a narcotic drug, or**
- 22               **methamphetamine (IC 35-48-4-1), unless:**
- 23                       **(A) the person does not have a prior conviction for**
- 24                       **dealing in a controlled substance under IC 35-48-4; and**
- 25                       **(B) the person received only minimal consideration as**
- 26                       **a result of the drug transaction.**
- 27               **(2) Dealing in a schedule I, II, III, IV, or V controlled**
- 28               **substance (IC 35-48-4-2 through IC 25-48-4-4), unless:**
- 29                       **(A) the person does not have a prior conviction for**
- 30                       **dealing in a controlled substance under IC 35-48-4; and**

1           **(B) the person received only minimal consideration as**  
2           **a result of the drug transaction.**  
3           **(3) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-**  
4           **10), unless:**  
5                 **(A) the person does not have a prior conviction for**  
6                 **dealing in a controlled substance under IC 35-48-4; and**  
7                 **(B) the person received only minimal consideration as**  
8                 **a result of the drug transaction.**  
9           **Sec. 4. "Forensic diversion test program" means a test**  
10           **program developed to ensure that an adult with a mental illness**  
11           **or an addictive disorder who has been convicted of a crime that is**  
12           **not a violent offense or a drug dealing offense and who does not**  
13           **have a previous conviction for a violent offense or a drug dealing**  
14           **offense receives adequate community based treatment or other**  
15           **services instead of incarceration.**  
16           **Sec. 5. "Mental illness" means a diagnosable case of**  
17           **schizophrenia, severe depression, or bipolar disorder that is of**  
18           **sufficient duration to meet diagnostic criteria within the most**  
19           **recent edition of the Diagnostic and Statistical Manual of Mental**  
20           **Disorders published by the American Psychiatric Association.**  
21           **Sec. 6. "Violent offense" means one (1) or more of the**  
22           **following offenses:**  
23                 **(1) Murder (IC 35-42-1-1).**  
24                 **(2) Attempted murder (IC 35-41-5-1).**  
25                 **(3) Voluntary manslaughter (IC 35-42-1-3).**  
26                 **(4) Involuntary manslaughter (IC 35-42-1-4).**  
27                 **(5) Reckless homicide (IC 35-42-1-5).**  
28                 **(6) Aggravated battery (IC 35-42-2-1.5).**  
29                 **(7) Battery (IC 35-42-2-1) as a Class A felony, Class B**  
30                 **felony, or Class C felony.**  
31                 **(8) Kidnapping (IC 35-42-3-2).**  
32                 **(9) A sex crime (IC 35-42-4).**  
33                 **(10) Incest (IC 35-46-1-3).**  
34                 **(11) Robbery as a Class A felony or a Class B felony (IC**  
35                 **35-42-5-1).**  
36                 **(12) Burglary as a Class A felony or a Class B felony (IC**  
37                 **35-43-2-1).**  
38                 **(13) Carjacking (IC 35-42-5-2).**  
39                 **(14) Assisting a criminal as a Class C felony (IC 35-44-3-2).**  
40                 **(15) Escape (IC 35-44-3-5) as a Class B felony, Class C**  
41                 **felony, or Class D felony.**  
42                 **(16) Trafficking with an inmate as a Class C felony (IC 35-**  
43                 **44-3-9).**  
44                 **(17) Causing death when operating a motor vehicle (IC**  
45                 **9-30-5-5).**  
46                 **(18) Criminal confinement (IC 35-42-3-3).**  
47                 **(19) An attempt or conspiracy to commit a crime listed in**  
48                 **this subdivision.**

(20) A crime under the laws of another jurisdiction, including a military court, that is substantially similar to any of the offenses listed in this subdivision.

Sec. 7. (a) A person who:

(1) has been diagnosed with a mental illness or an addictive disorder by a physician licensed in Indiana;

(2) has been convicted of a crime that is not a:

(A) violent offense; or

(B) drug dealing offense;

(3) does not have a previous conviction for a violent offense or a drug dealing offense; and

(4) is:

(A) participating in a community corrections program;

(B) participating in a community transition program; or

(C) on probation;

may be permitted to participate in a forensic diversion test program.

(b) The court shall order an executed sentence for one (1) or more offenses that are nonsuspendible and that are eligible for the forensic diversion test program. The court may stay the execution of all or part of a nonsuspendible sentence during the time period in which the offender satisfactorily participates in the forensic diversion test program.

(c) If the offender satisfactorily completes the forensic diversion test program, the court may order the executed sentence waived. If the offender does not satisfactorily complete the forensic diversion test program, the court shall lift the stay imposed under this section and order the sentence executed.

Sec. 8.(a) The judge responsible for administering the forensic diversion test program shall, after consulting with the:

(1) community corrections advisory board, if there is one in the county;

(2) head of the county public defender office, if there is one in the county;

(3) head of the probation department; and

(4) prosecuting attorney;

adopt rules governing the operation of the forensic diversion test program.

(b) The judge responsible for administering the forensic diversion test program may, after consulting with the:

(1) community corrections advisory board, if there is one in the county;

(2) head of the county public defender office, if there is one in the county;

(3) head of the probation department; and

(4) prosecuting attorney;

1     **alter or amend the rules governing the operation of the forensic**  
 2     **diversion test program at any time.**

3     **(c) The rules adopted under this section must:**

4         **(1) require that the forensic diversion test program be**  
 5         **administered by a judge; and**

6         **(2) only permit the release of a participant in the forensic**  
 7         **diversion test program by a judge.**

8     **(d) The rules adopted under this section may be more**  
 9     **restrictive than the forensic diversion test program requirements**  
 10    **set forth in this chapter.**

11     **Sec. 9. The department may provide funds for forensic**  
 12    **diversion test programs for those offenders who were diverted**  
 13    **from a mandatory period of incarceration from the department.**

14     **Sec. 10. This chapter expires June 30, 2010."**

15     Page 3, line 8, delete ":".

16     Page 3, line 8, reset in roman "unless the court has approved  
 17    placement of the".

18     Page 3, line 9, reset in roman "offender in a forensic diversion".

19     Page 3, line 9, after "diversion" insert "**test program under IC 11-**  
 20    **12-3.7:**".

21     Renumber all SECTIONS consecutively.

(Reference is to SB 139 as printed January 16, 2004.)

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Senator LONG